



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R03-OAR-2017-0398; FRL-9973-37-Region 3]**

#### **Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland. The revision is in response to EPA's February 3, 2017 Findings of Failure to Submit for various requirements relating to the 2008 8-hour ozone national ambient air quality standards (NAAQS). This SIP revision is specific to nonattainment new source review (NNSR) requirements. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R03-OAR-2017-0398. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Talley, (215) 814-2117, or by e-mail at [talley.david@epa.gov](mailto:talley.david@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On May 8, 2017, the Maryland Department of the Environment (MDE) submitted on behalf of the State of Maryland a formal revision, requesting EPA’s approval for the SIP of its NNSR Certification for the 2008 Ozone Standard (Revision 17-01). The SIP revision is in response to EPA’s final 2008 8-hour ozone NAAQS Findings of Failure to Submit for NNSR requirements. *See* 82 FR 9158 (February 3, 2017). Specifically, Maryland is certifying that its existing NNSR program, covering the Baltimore Nonattainment Area (which includes Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties and the city of Baltimore), the Philadelphia-Wilmington-Atlantic City Nonattainment Area (which includes Cecil County in Maryland), and the Washington, DC Nonattainment Area (which includes Calvert, Charles, Frederick, Montgomery, and Prince Georges Counties in Maryland) for the 2008 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165, as amended by the final rule titled “Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements” (SIP Requirements Rule), for ozone and its precursors.<sup>1</sup> *See* 80 FR 12264 (March 6, 2015).

---

<sup>1</sup> The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

#### *A. 2008 8-Hour Ozone NAAQS*

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR 50.15, the 2008 8-hour ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Philadelphia-Wilmington-Atlantic City Area and the Washington, DC Area were classified as marginal nonattainment areas, and the Baltimore Area was classified as a moderate nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008-2010 ambient air quality data. *See* 77 FR 30088. On March 6, 2015, EPA issued the final SIP Requirements Rule, which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS. *See* 80 FR 12264. Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012-2014 monitoring data. *See* 40 CFR 51.1103. The Philadelphia-Wilmington-Atlantic City Area and the Washington, DC Area did not attain the 2008 8-hour ozone NAAQS by July 20, 2015; however, these areas did meet the CAA section 181(a)(5) criteria, as interpreted in 40 CFR 51.1107, for a one-year attainment date extension. *See* 81 FR 26697 (May 4, 2016). Therefore, on April 11, 2016, the EPA Administrator signed a final rule

extending the Philadelphia-Wilmington-Atlantic City Area and the Washington, DC Area 2008 8-hour ozone NAAQS attainment date from July 20, 2015 to July 20, 2016. *Id.*<sup>2</sup>

Moderate areas, such as the Baltimore Area, are required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2018, six years after the effective date of the initial nonattainment designations.<sup>3</sup> *See* 40 CFR 51.1103. The statutorily required determination of attainment (DOA), for the Baltimore Area, which is due prior to the attainment date for the Area, has not passed and will be addressed in a future rulemaking action.

Based on initial nonattainment designations for the 2008 8-hour ozone standard, as well as the March 6, 2015 final SIP Requirements Rule, Maryland was required to develop a SIP revision addressing certain CAA requirements for the Philadelphia-Wilmington-Atlantic City, Washington, DC, and Baltimore Areas, and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (i.e., July 20, 2015). *See* 80 FR 12264 (March 6, 2015). EPA is taking action on Maryland's May 8, 2017 NNSR Certification SIP revision. EPA's analysis of how this SIP

---

<sup>2</sup> EPA proposed approval of a Determination of Attainment (DOA) for the 2008 8-hour ozone NAAQS for the Philadelphia-Wilmington-Atlantic City Area and the Washington, DC Area on April 18, 2017, and April 25, 2017, respectively. These proposed actions were based on complete, certified, and quality assured ambient air quality monitoring data for the 2013-2015 monitoring period. *See* 82 FR 18268 (April 18, 2017) and 82 FR 19011 (April 25, 2017). It should be noted that a DOA does not alleviate the need for Maryland to certify that their existing SIP approved NNSR program is as stringent as the requirements at 40 CFR 51.165, as NNSR applies in nonattainment areas until an area has been redesignated to attainment. Subsequently, EPA issued final rulemaking actions on both of these DOAs. *See* 82 FR 50814 (November 2, 2017) (Philadelphia Area) and 82 FR 52651 (November 14, 2017) (Washington, DC area).

<sup>3</sup> On June 1, 2015, EPA finalized a clean data determination (CDD) for the Baltimore Nonattainment Area. This determination was based upon complete, quality-assured, and certified ambient air quality monitoring data that shows the Baltimore Area has monitored attainment of the 2008 8-hour ozone NAAQS for the 2012–2014 monitoring period. As a result of this determination, the requirement for the Baltimore Area to submit an attainment demonstration and associated reasonably available control measures (RACM), reasonable further progress plans (RFP), contingency measures, and other SIP revisions related to attainment of the standard are suspended for as long as the area continues to attain the 2008 8-hour ozone standard. *See* 80 FR 30941 (June 2, 2015). This action did not alleviate the need for Maryland to submit a NNSR Certification SIP revision, which is the subject of this rulemaking action.

revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS is provided in Section II below.

*B. 2017 Findings of Failure to Submit SIP for the 2008 8-Hour Ozone NAAQS*

Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182.<sup>4</sup> States in the ozone transport region (OTR), such as Maryland, are additionally subject to the requirements outlined in CAA section 184.

Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For a marginal area, such as the Philadelphia-Wilmington-Atlantic City Area and the Washington, DC Area, a state is required to submit a baseline emissions inventory, adopt a SIP requiring emissions statements from stationary sources, and implement a NNSR program for the relevant ozone standard. *See* CAA section 182(a). For a moderate area such as the Baltimore Area, a state needs to comply with the marginal area requirements, plus additional requirements, including the requirement to submit a demonstration that the area will attain in six years, the requirement to adopt and implement certain emissions controls, such as reasonably available control technology (RACT), and the requirement for greater emissions offsets for new or modified major stationary sources under the state's NNSR program. For each higher ozone nonattainment classification, a state needs to comply with all lower area classification requirements, plus additional emissions controls and more expansive NNSR offset requirements.

---

<sup>4</sup> Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's "design value," which represents air quality in the area for the most recent three years). The possible classifications for ozone nonattainment areas are Marginal, Moderate, Serious, Severe, and Extreme. *See* CAA section 181(a)(1).

The CAA sets out specific requirements for states in the OTR.<sup>5</sup> Upon promulgation of the 2008 8-hour ozone NAAQS, states in the OTR were required to submit a SIP revision for RACT. *See* 40 CFR 51.1116. This requirement is the only recurring obligation for an OTR state upon revision of a NAAQS, unless that state also contains some portion of a nonattainment area for the revised NAAQS.<sup>6</sup> In that case, the nonattainment requirements described previously also apply to those portions of that state.

In the March 6, 2015 SIP Requirements Rule, EPA detailed the requirements applicable to ozone nonattainment areas, as well as requirements that apply in the OTR, and provided specific deadlines for SIP submittals. *See* 80 FR 12264.

On February 3, 2017, EPA found that 15 states and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 8-hour ozone NAAQS that apply to nonattainment areas and/or states in the OTR. *See* 82 FR 9158. As explained in that rulemaking action, consistent with the CAA and EPA regulations, these Findings of Failure to Submit established certain deadlines for the imposition of sanctions if a state does not submit a timely SIP revision addressing the requirements for which the finding is being made, and for the EPA to promulgate a federal implementation plan (FIP) to address any outstanding SIP requirements.

EPA found that the State of Maryland failed to submit SIP revisions in a timely matter to satisfy NNSR requirements for its marginal and moderate nonattainment areas, specifically the

---

<sup>5</sup> CAA section 184 details specific requirements for a group of states (and the District of Columbia) that make up the OTR. States in the OTR are required to submit RACT SIP revisions and mandate a certain level of emissions control for the pollutants that form ozone, even if the areas in the state meet the ozone standards.

<sup>6</sup> NNSR requirements continue to apply in the OTR. *See* CAA section 184(b).

Philadelphia-Wilmington-Atlantic City Area, the Washington, DC Area, and the Baltimore Area.<sup>7</sup> Maryland submitted its May 8, 2017 SIP revision to address the specific NNSR requirements for the 2008 8-hour ozone NAAQS, located in 40 CFR 51.160-165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS and the Findings of Failure to Submit is provided in Section II below.

On September 29, 2017 (82 FR 45475), EPA published a direct final rulemaking notice (DFRN) for the State of Maryland. In the DFRN, EPA approved the Maryland submittal pertaining to NNSR requirements for the 2008 8-hour ozone NAAQS. On the same date (82 FR 45547), EPA published a notice of proposed rulemaking (NPR) for the action. EPA published the DFRN without prior proposal because the Agency viewed the submittals as noncontroversial and anticipated no adverse comments. EPA explained that if adverse comments were received during the comment period, the DFRN would be withdrawn and all public comments received would be addressed in a subsequent final rule based on the September 29, 2017 proposed rule. EPA received an adverse comment, and on November 22, 2017 (82 FR 55510) withdrew the DFRN.

## **II. Summary of SIP Revision and EPA Analysis**

This rulemaking action is specific to Maryland's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area.<sup>8</sup> The specific NNSR

---

<sup>7</sup> The EPA found that the State of Maryland also failed to submit SIP revisions for inspection and maintenance (I/M) basic and nitrogen oxide RACT for major sources. These SIP requirements will be addressed in separate rulemaking actions and will not be discussed here. See 82 FR 9158 (February 3, 2017).

<sup>8</sup> See CAA sections 172(c)(5), 173 and 182.

requirements for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.160–165. The SIP Requirements Rule explained that, for each nonattainment area, a NNSR plan or plan revision was due no later than 36 months after the July 20, 2012 effective date of area designations for the 2008 8-hour ozone standard (i.e., July 20, 2015).<sup>9</sup>

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.165. *See* 40 CFR 51.1114. These NNSR program requirements include those promulgated in the “Phase 2 Rule” implementing the 1997 8-hour ozone NAAQS (75 FR 71018 (November 29, 2005)) and the SIP Requirements Rule implementing the 2008 8-hour ozone NAAQS. Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: set major source thresholds for oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)-(iv) and (2); classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO<sub>x</sub> as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NO<sub>x</sub> as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)-(C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)-(2); provide that the requirements applicable to VOC also apply to NO<sub>x</sub> pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NO<sub>x</sub> pursuant to 40 CFR 51.165(a)(9)(i)-(iii) (renumbered as (a)(9)(ii)-

---

<sup>9</sup> With respect to states with nonattainment areas subject to a finding of failure to submit NNSR SIP revisions, such revisions would no longer be required if the area were redesignated to attainment. The CAA’s prevention of significant deterioration (PSD) program requirements apply in lieu of NNSR after an area is redesignated to attainment. For areas outside the OTR, NNSR requirements do not apply in areas designated as attainment.



(iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS). Under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105. *See* 40 CFR 51.165(a)(12).

Maryland's longstanding SIP approved NNSR program, established in Code of Maryland Regulations (COMAR) Air Quality Rule COMAR 26.11.17 – *Nonattainment Provisions for Major New Sources and Major Modifications*, applies to the construction and modification of major stationary sources in nonattainment areas. In its May 8, 2017 SIP revision, Maryland certifies that the version of the Air Quality Rule COMAR 26.11.17 in the SIP is at least as stringent as the federal NNSR requirements for the Philadelphia-Wilmington-Atlantic City Area, the Washington, DC Area, and the Baltimore Area. EPA last approved revisions to the SIP approved version of Maryland's NNSR rule in 2012 addressing, among other things, NSR Reform and NO<sub>x</sub> as a precursor to ozone. *See* 77 FR 45949 (August 2, 2012).<sup>10</sup>

EPA notes that neither COMAR 26.11.17 nor Maryland's approved SIP contain a regulatory provision pertaining to any emissions change of VOC in extreme nonattainment areas, as specified in 40 CFR 51.165(a)(1)(v)(F). However, Maryland has never had an area designated extreme nonattainment for any of the ozone NAAQS, and, thus, the Maryland SIP is not required to contain this provision until such a time. Additionally, the anti-backsliding provisions in 40 CFR 51.165(a)(12) are not found in either COMAR 26.11.17 or the Maryland SIP. Maryland's major stationary source thresholds were established for the 1997 8-hour ozone NAAQS

---

<sup>10</sup> On August 30, 2012, EPA published a rulemaking correcting minor errors in their August 2, 2012 final rule. The correction of these errors did not change EPA's final action to approve the Maryland regulations. *See* 77 FR 52605.

nonattainment designations and remain unchanged in Maryland's federally-approved SIP.<sup>11</sup>

Therefore, all of the sources located in the 2008 8-hour ozone nonattainment areas in Maryland are required to meet a major stationary source threshold of 25 tons or more per year of VOC or NO<sub>x</sub>. This requirement continues to be more stringent than the 2008 8-hour ozone standards at issue in this action, and, thus, the above mentioned anti-backsliding requirements are not required.

The version of COMAR 26.11.17 that is contained in the current SIP has not changed since the 2012 rulemaking where EPA last approved Maryland's NNSR provisions. This version of the rule covers the Philadelphia-Wilmington-Atlantic City, Washington, DC, and Baltimore Nonattainment Areas and remains adequate to meet all applicable NNSR requirements for the 2008 8-hour ozone NAAQS in 40 CFR 51.165, the Phase 2 Rule and the SIP Requirements Rule. A detailed description of the state submittal and EPA's evaluation is included in a technical support document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document or is also available electronically within the Docket for this rulemaking action.

### **III. Public Comments and EPA Responses**

EPA received one comment on the proposed approval of MDE's May 8, 2017 submittal requesting EPA's approval for the SIP of its NNSR Certification for the 2008 Ozone Standard (Revision 17-01).

*Comment:* The commenter stated that it is unclear to them how Maryland met the requirements for a NNSR SIP for the OTR, but did not meet the requirements for the NNSR SIP for the

---

<sup>11</sup> Under the 1997 8-hour ozone NAAQS, the Baltimore Area was classified as serious nonattainment and the Philadelphia-Wilmington-Atlantic City and Washington, DC Areas were classified as moderate nonattainment.

Baltimore and Philadelphia areas. The commenter stated that if Maryland submitted a SIP for the OTR that met the NNSR requirements, then how is it possible Maryland did not meet the requirements for Philadelphia and Baltimore. The commenter then asserted that if Maryland did not submit a NNSR SIP for the OTR, then EPA needs to make a Finding of Failure to Submit for Maryland to submit a NNSR SIP for OTR requirements. The commenter further asserts that EPA should consider this comment a notice of intent to sue EPA for failing to perform its nondiscretionary duty to issue a Finding of Failure to Submit for Maryland's non-submission of a NNSR SIP for OTR requirements.

*EPA Response:* EPA's September 29, 2017 DFRN would have approved Maryland's submittal of a SIP revision which specifically addressed the NNSR permitting requirements in CAA sections 172(c) and 182(b) for the 2008 8-hour ozone NAAQS for the Baltimore and Philadelphia-Wilmington-Atlantic City Nonattainment Areas. *See* 82 FR 45475.<sup>12</sup> As explained in EPA's September 29, 2017 DFRN and in this present action, the Maryland submittal satisfies Maryland's requirement to submit a NNSR SIP revision for the Baltimore and Philadelphia-Wilmington-Atlantic City Nonattainment Areas in response to EPA's February 3, 2017 final 2008 8-hour ozone NAAQS Findings of Failure to Submit for NNSR requirements. *See* 82 FR 9158. Maryland's obligations as a member of the OTR are not the subject of this rulemaking. Pursuant to CAA sections 182(f) and 184(b)(2), major stationary sources of VOC and NO<sub>x</sub> in the OTR are subject to requirements applicable to major stationary sources in moderate nonattainment with ozone NAAQS which includes NNSR permitting requirements. The specific requirements for Maryland as an OTR state were discussed in EPA's February 3, 2017 Findings of Failure to Submit and will not be restated here. However, because EPA did not propose any

---

<sup>12</sup> While not addressed by the commenter, in addition to the Baltimore and Philadelphia-Wilmington-Atlantic City Nonattainment Areas, Maryland's submittal also addresses the Washington, DC Nonattainment Area.

action related to Maryland's NNSR requirements for the OTR, the commenter's statements related to Maryland's NNSR requirements for the OTR are not germane to this rulemaking. As discussed in EPA's DFRN, Maryland's NNSR provisions at COMAR 26.11.17 are in the Maryland SIP and meet the NNSR requirements for the 2008 8-hour ozone NAAQS for the Baltimore and Philadelphia-Wilmington-Atlantic City Nonattainment Areas as identified in the SIP Requirements Rule, for ozone and its precursors, as well as EPA's February 3, 2017 Findings of Failure to Submit, as noted previously. *See* 80 FR 12264 (March 6, 2015) and 82 FR 9158, respectively.

Regarding the assertion that EPA should consider this comment to be the commenter's "notice of intent" to sue EPA for failing to perform its nondiscretionary duty to make a Finding of Failure to Submit for a NNSR SIP for the OTR requirements, EPA notes that requirements for serving upon EPA a notice of intent to sue are in CAA section 304 and in 40 CFR Part 54, specifically in 40 CFR 54.2. Commenting within an unrelated rulemaking is not appropriate service of a notice of intent to sue pursuant to 40 CFR 54.2 and CAA section 304.

#### **IV. Final Action**

EPA is approving Maryland's May 8, 2017 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Philadelphia-Wilmington-Atlantic City, Washington, DC, and Baltimore Nonattainment Areas. EPA has concluded that the State's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. *See* 82 FR 9158.

#### **V. Statutory and Executive Order Reviews**

### *A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Maryland's 2008 8-hour ozone NAAQS Certification SIP revision for NNSR may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 11, 2018.

Cosmo Servidio,  
Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart V--Maryland**

2. In §52.1070, the table in paragraph (e) is amended by adding the entry “2008 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements” at the end of the table to read as follows:

**§52.1070 Identification of plan.**

\* \* \* \*

(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* * *	* * *		
2008 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements	The Baltimore Area (includes Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties and the city of Baltimore), the Philadelphia-Wilmington-Atlantic City Area (includes Cecil County in Maryland), and the Washington,	5/8/2017	[insert date of publication in the Federal Register], [insert Federal Register citation]	



Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
	DC Area (includes Calvert, Charles, Frederick, Montgomery, and Prince Georges Counties in Maryland)			

[FR Doc. 2018-01518 Filed: 1/26/2018 8:45 am; Publication Date: 1/29/2018]